



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

903 BAIL APPLICATION NO. 2373 OF 2023

Ganesh Ananda Kapse

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. N.S. Ghanekar

APP for Respondent 1 : Mr. N.S. Tekale

Advocate for Respondent 2 : Mr. B.K. Patil (Appointed
Through Legal Aid.)

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CORAM : S. G. CHAPALGAONKAR, J.

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Reserved on : February 06, 2024

Pronounced on : February 08, 2024

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PER COURT :-

1. The applicant seeks regular bail in connection with Crime No.0248 of 2023 registered with Wadod Bazar police station, District-Aurangabad for the offences punishable under sections 354, 354-A of the Indian Penal Code and under section 8 and 12 of the Protection of Children from Sexual Offences Act (for short POCSO).

2. Investigation has set in motion on the basis of the information given by mother of the victim. It is alleged that victim is prosecuting her study in 5th standard in English Medium School. She is aged about 11 years. On 15.10.2023, informant noticed that victim is disturbed and she is not making conversation as usual. She was not talking to any one. Looking to her changed behaviour, when informant asked her the reason, she disclosed that applicant/accused who is her

school teacher outraged her modesty, touched and kissed her with sexual intent.

3. On the basis of the aforesaid information, the applicant came to be arrested on 21.10.2023. Since then, he is behind bar. Investigation in the matter is complete and charge-sheet has been filed. Prayer of the applicant for grant of regular bail came to be rejected vide order dated 20.12.2023. Hence, this application.

4. Mr. Ghanekar, learned advocate appearing for the applicant would submit that applicant is innocent person and he has been falsely implicated in the aforesaid crime. He would submit that there is inordinate delay in lodging the FIR. Victim disclosed the alleged incident to her mother on 15.10.2023. However, FIR has been lodged on 21.10.2023. He would submit that, although, few other girls from the school of the victim have alleged to have made similar allegations, offence is punishable with five years imprisonment. The applicant is behind bar for more than four months. His further detention would not be necessary.

5. Mr. Tekale, learned A.P.P. and Mr. Patil, learned advocate appearing for respondent no.2 vehemently opposes the prayer. They would invite attention of this Court to statement of witnesses recorded under section 164 (5) of the Criminal Procedure Code to disclose that apart from the victim referred in the FIR, there are other girls, who are victimized at the hands of the applicant. They would submit that similar allegations are made by the witnesses against the applicant.

They would submit that offence is heinous and attract penalty under section 8 and 12 of the POCSO Act.

6. Having considered the submissions advanced, it is apparent that there are serious allegations against the applicant which are further aggravated by statement of two other victims. However, it can be observed that incident is reported after six days when the victim had disclosed the same to the informant. Apparently, there is delay in lodging the FIR, which needs to be explained by the prosecution. Statement of other two victims are recorded under section 164(5) of Cr.P.C. wherein they are making similar allegations against the applicant. However, there is no explanation as to why parents of those victims have not lodged report to the police immediately after getting knowledge.

7. The aforesaid circumstances requires to be tested during course of the trial. Investigation in the matter is complete. Charge-sheet is filed. Apparently, offences are not punishable with imprisonment for life or death. Maximum punishment provided for such offence is five years. In that view the matter, further detention of the applicant would not be necessary. Hence, the case is made out for grant of bail, subject to certain conditions. Hence, the following order.

ORDER

- i. Bail Application is hereby allowed.
- ii. The applicant - Ganesh Ananda Kapse be released on bail in connection with Crime No.0248 of 2023 registered with Wadod Bazar police station,

District-Aurangabad for the offences punishable under sections 354, 354-A of the Indian Penal Code and under section 8 and 12 of the Protection of Children from Sexual Offences Act on his furnishing P.B. & S.B. of Rs.50,000/- (Rs. Fifty Thousand), on the following conditions :-

- a] The applicant shall not tamper the prosecution evidence in any manner.
 - b] The applicant shall not enter villages Wadod Bazar, Tq. Phulambri, village Mahal Kinola or Naygavhan till conclusion of the trial.
 - c] The applicant shall not establish contact with the victim or any witness named in the charge-sheet.
- iii. Bail application is accordingly disposed off.
- iv. Since Advocate Mr. Patil is appointed through the panel of Legal Aid, the Secretary, High Court Legal Services Sub-committee, Aurangabad to pay the fees of the appointed counsel for respondent no.2/victim as per Rules.

(S.G. CHAPALGAONKAR)
JUDGE

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aaa/-(f)